



The Comptroller General
of the United States

Washington, D.C. 20548

Kupper

Decision

Matter of: Snowbird Industries, Inc.
File: B-226980
Date: June 25, 1987

DIGEST

1. It is primarily the contracting agency's responsibility to determine its minimum needs, and the General Accounting Office will not question such a determination absent a clear showing that it was arbitrary or capricious.
2. Compelling reason exists for cancellation of a solicitation after bid opening where the record indicates that the specifications for ice cube making machines for naval shipboard use do not adequately describe the government's actual needs.

DECISION

Snowbird Industries, Inc., protests the cancellation of invitation for bids (IFB) No. DLA400-87-B-0818, issued October 14, 1986, by the Defense General Supply Center, Defense Logistics Agency, Richmond, Virginia. The IFB was for 66 automatic ice cube making machines for naval shipboard use. The protester contends that the revision of a military specification for this equipment does not constitute a compelling reason for canceling the IFB.

We deny the protest.

The IFB called for ice cube making machines that complied with military specification MIL-I-11867J, dated February 27, 1981, and amended on September 7, 1983; the IFB also referred to a cut sheet dated July 2, 1985.

DLA opened bids on November 13 and found that Snowbird had submitted the lowest bid of the two received. After bid opening, however, the contracting officer became aware that the military specification in question had been superseded by MIL-I-11867K, dated June 23, 1986. As a result, the contracting officer states, he canceled the IFB on March 4, 1987, pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(2) (1986), in order to resolicit using the revised specifications.

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The revised specifications require that the ice storage bin be lined with a type of stainless steel (grade B 300 series) that does not rust, is resistant to corrosion, and is nonmagnetic. A different type of stainless steel (400 series) liner and/or a plastic liner, both acceptable under version J of the military specification, have been eliminated. In addition, the specifications for the legs, bin, and storage cabinet, if separate, are set forth in considerably more detail in version K than in version J. According to the agency, the revised specifications represent its minimum needs for corrosion resistance and stability in shipboard use.

The protester, however, asserts that the changes are minor and that in any event, it will meet the K-version of the specifications at no extra charge, and will adhere to the original delivery schedule. In addition, the protester argues that since the effective date of the K-version, the agency has issued seven other solicitations using the J-version, and has canceled none. The firm asserts that the cancellation here is therefore discriminatory.

The record indicates that the Navy has determined through experience that the 300-series stainless steel specified in revision K does not rust, whereas the 400 series permitted in revision J does. Further, the agency determined the ice storage bin legs needed to be 8 inches (plus or minus 1/2 inch) and that the bin needed 4 removable legs suitable for bolting to the deck. This was a change from revision J and its amendment, which permitted 6-inch legs and provided that the cabinet, and storage bin when separated, be provided with holes for bolting to a deck.

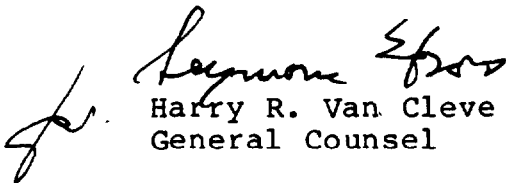
Contrary to Snowbird's contentions, we believe these changes in the government's minimum needs were more than minor, and the agency's decision to require these changes appears neither arbitrary nor capricious. Snowbird's offer to perform in accord with the new specification at its original bid price is, in effect, a late modification that DLA could not properly accept without offering other bidders an opportunity to bid to the same, revised military specification. The agency is accomplishing this by resolicitation.

To summarize the law regarding cancellation, contracting officers have broad authority to reject all bids and cancel a solicitation. However, because of the adverse effect cancellation can have on the competitive bidding system, a compelling reason must exist to warrant cancellation after bid opening. FAR, 48 C.F.R. § 14.404-1. The use of specifications that do not adequately describe the government's actual needs generally provides a compelling reason.

See, e.g., Tecom, Inc., B-213815.2, Aug. 6, 1984, 84-2 CPD ¶ 152; Kings Point Mfg. Co., Inc., B-210757, Sept. 19, 1983, 83-2 CPD ¶ 342.

In this regard, it is primarily the contracting agency's responsibility to determine its minimum needs, and our Office will not question such a determination absent a clear showing that the determination was arbitrary or capricious. Winandy Greenhouse Co., Inc., B-208876, June 7, 1983, 83-1 CPD ¶ 615. An agency thus is not precluded from correcting or clarifying a solicitation when its minimum needs have not been met. It is the protester who bears the burden of showing that the determination to cancel is unreasonable. Surgical Instrument Co. of America, B-211368, Nov. 18, 1983, 83-2 CPD ¶ 583. Snowbird has made no such showing here.

While it is unfortunate that the contracting officer apparently was not aware that the more recent K-version of the military specification should have been included in the subject IFB, this does not change the fact that an award under the subject IFB would not have met the agency's needs. Previous awards for similar equipment were not for shipboard use, the agency states, and Snowbird offers no rebuttal. Nor has Snowbird provided evidence that the cancellation was intended to be discriminatory. We therefore deny the protest.


Harry R. Van Cleve
General Counsel